



The motion is approved; provided, however a hearing shall be held on March 15, 2007 at 9:30 to hear any objections. This stipulations shall be immediately noticed to any entities that have an interest in this loan.

Entered on Docket  
March 09, 2007

Hon. Linda B. Riegle  
United States Bankruptcy Judge

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12 Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

14 In re:  
15 USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

Case Nos. BK-S-06-10725 LBR  
Case Nos. BK-S-06-10726 LBR  
Case Nos. BK-S-06-10727 LBR  
Case Nos. BK-S-06-10728 LBR  
Case Nos. BK-S-06-10729 LBR

16 In re:  
17 USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

Chapter 11

18 In re:  
19 USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,  
Debtor.

Jointly Administered Under  
Case No. BK-S-06-10725 LBR

20 In re:  
21 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

**STIPULATION AND ORDER  
POSTPONING THE TRANSFER OF  
USACM'S RIGHTS AND ASSETS  
RELATING TO THE PLACER  
VINEYARDS LOANS TO THE  
USACM TRUST [AFFECTS  
DEBTOR USA COMMERCIAL  
MORTGAGE]**

22 In re:  
23 USA SECURITIES, LLC,  
Debtor.

24 Affects:  
25  All Debtors  
 USA Commercial Mortgage Company  
 USA Securities, LLC  
 USA Capital Realty Advisors, LLC  
 USA Capital Diversified Trust Deed Fund, LLC  
 USA First Trust Deed Fund, LLC

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1                   Debtor in Possession USA Commercial Mortgage Company ("USACM"), by and through  
 2 its counsel Lenard Schwartzer of Schwarter & McPherson Law Firm, the Official Committee of  
 3 Unsecured Creditors of USA Commercial Mortgage Company (the "UCC Committee"), by and  
 4 through its counsel Susan Freeman and Rob Charles of Lewis and Roca, LLP, and Compass USA  
 5 SPE, LLC, successor in interest to Compass Partners, LLC ("Compass"), by and through its  
 6 counsel, George Davis and Tyson Lomazow of Weil Gotshal & Manges LLP, hereby stipulate and  
 7 agree as follows:

8                   **WHEREAS**, Compass is the Court approved purchaser of certain assets of USACM and  
 9 Debtor USA Capital First Trust Deed Fund, LLC ("FTDF"), pursuant to the terms of the Compass  
 10 Asset Purchase Agreement dated December 8, 2006 ("Compass APA"), which was filed with this  
 11 Court on December 18, 2006 as Docket No. 2164.

12                   **WHEREAS**, the definition of "Commercial Mortgage Assets" under Section 1.1 of the  
 13 Compass APA specifically excludes "(vi) loans made to Placer Vineyards and Marquis Hotel,  
 14 which shall not be included on the Serviced Loan Schedule."

15                   **WHEREAS**, pursuant to this definition in the Compass APA, the assets of USACM  
 16 relating to the two loans serviced by USACM that are owed by Placer County Land Speculators,  
 17 LLC on the Placer Vineyards Project (the "Placer Vineyards Loans") were not sold to Compass  
 18 pursuant to the Compass APA.

19                   **WHEREAS**, after the closing of the sale of assets to Compass pursuant to the Compass  
 20 APA, Compass has subsequently offered to also purchase from USACM the "Commercial  
 21 Mortgage Assets" relating to the Placer Vineyards Loans (the "Placer Vineyards Commercial  
 22 Mortgage Assets") from USACM for the purchase price of Three Hundred Thousand Dollars  
 23 (\$300,000), but only if the sale of the Placer Vineyards Commercial Mortgage Assets to Compass  
 24 can be sold by USACM and can be sold free and clear of all liens, claims, encumbrances and  
 25 interests pursuant to 11 U.S.C. § 363(f).

26                   **WHEREAS**, USACM will be filing its "Motion To Sell Under Section 363 All  
 27 Commercial Mortgage Assets of Debtor USA Commercial Mortgage Company in the Placer  
 28 Vineyards Loans to Compass USA SPE, LLC" (the "Motion"), pursuant to which USACM will be

1 seeking Court approval of the sale of the Placer Vineyards Commercial Mortgage Assets to  
 2 Compass, subject to higher and better offers, and USACM will provide notice of the Motion to all  
 3 of the current Direct Lenders of the Placer Vineyard Loans.

4       **WHEREAS**, it is currently anticipated that the Effective Date (the “Effective Date”) of the  
 5 Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “Confirmed Plan”) will  
 6 occur prior to the hearing on the Motion.

7       **WHEREAS**, the Plan contemplates that the USACM Trust (the “USACM Trust”) that is  
 8 to be created and governed pursuant to the Plan will be funded with all assets of the USACM  
 9 Estate not collected or disposed of prior to the Effective Date of the Confirmed Plan.

10       **WHEREAS**, it is not clear from the Confirmed Plan if the Placer Vineyards Commercial  
 11 Mortgage Assets are automatically transferred to the USACM Trust on the Effective Date or if  
 12 USACM has the ability to delay the transfer until such time as USACM is able to reduce the value  
 13 of the Placer Vineyards Commercial Mortgage Assets to cash, at which time the cash would be  
 14 transferred to the USACM Trust.<sup>1</sup>

15       **WHEREAS**, the USACM Trust does not have the ability to sell the Placer Vineyards  
 16 Commercial Mortgage Assets to Compass under 11 U.S.C. § 363(f) because the USACM Trust is  
 17 not a Chapter 11 debtor-in-possession.

18       **WHEREAS**, USACM and the UCC Committee have agreed that the Confirmed Plan  
 19 should be clarified to provide that the transfer of the Placer Vineyards Commercial Mortgage  
 20 Assets from USACM to the USACM Trust is not automatic on the Effective Date of the  
 21 Confirmed Plan, and instead should not be effective under the Confirmed Plan until the Motion  
 22 has been heard and ruled upon by this Court (or until the Motion is withdrawn), and if the Motion  
 23 is granted, until after the sale of the Placer Vineyards Commercial Mortgage Assets to Compass

24  
 25  
 26       <sup>1</sup> This uncertainty under the Confirmed Plan arises because the USACM Trust does not administer all of the assets  
 27 that remain in the USACM estate following the Effective Date of the Confirmed Plan, leaving questions particularly  
 28 as to the timing of the transfer of certain assets from USACM to the USACM Trust. The same uncertainty does not  
 exist under the Confirmed Plan with respect to Post-Effective Date DTDF (as defined in the Confirmed Plan) because  
 all of the assets to be transferred to Post-Effective Date DTDF under the Confirmed Plan are automatically transferred  
 to and administered by Post-Effective Date DTDF.

1 (or to the purchaser under a higher and better offer, if any) has been completed, at which time the  
 2 \$300,000 cash purchase price will be transferred by USACM to the USACM Trust.

3       **WHEREAS**, USACM and the UCC Committee assert that this clarification of the Plan is  
 4 not a modification of the Plan because the \$300,000 cash purchase price of the Placer Vineyards  
 5 Commercial Mortgage Assets will be transferred by USACM to the USACM Trust as  
 6 contemplated by the Plan.

7       **WHEREAS**, because of the imminent occurrence of the Effective Date for the Confirmed  
 8 Plan, USACM and the UCC Committee agree that the automatic 10 day stay under Bankruptcy  
 9 Rule 6004(g) should not apply, and this Order should be effective immediately upon its entry.

10       **WHEREAS**, the Official Committee of Holders of Executory Contract Rights Through  
 11 USA Commercial Mortgage Company (the “Direct Lenders Committee”), the Official Committee  
 12 of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the “FTDF Committee”),  
 13 the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund,  
 14 LLC (the “DTDF Committee”), and the Office of the United States Trustee have no objection to  
 15 this Stipulation and Order.

16       **THEREFORE**, in consideration of the foregoing, USACM and the UCC Committee agree  
 17 as follows:

18       1.       The foregoing recitals are incorporated herein in full.  
 19       2.       The Confirmed Plan is hereby clarified to provide that the transfer of the Placer  
 20 Vineyards Commercial Mortgage Assets from USACM to the USACM Trust is not automatic on  
 21 the Effective Date of the Confirmed Plan, and instead will not be effective under the Confirmed  
 22 Plan until the Motion has been heard and ruled upon by this Court (or until the Motion is  
 23 withdrawn), and if the Motion is granted, until after the sale of the Placer Vineyards Commercial  
 24 Mortgage Assets to Compass (or to the purchaser under a higher and better offer, if any) has been  
 25 completed, at which time the \$300,000 cash purchase price will be transferred by USACM to the  
 26 USACM Trust.

27       ///

28       ///

3. The automatic 10 day stay under Fed. R. Bankr. P. 6004(g) shall not apply to this Order, and this Order shall be effective immediately upon entry of this Order.

/s/ Tyson M. Lomazow  
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Submitted By:

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## Attorneys for Debtors

1 **STIPULATION AND ORDER POSTPONING THE TRANSFER OF USACM'S RIGHTS**  
2 **AND ASSETS RELATING TO THE PLACER VINEYARDS LOANS TO THE USACM**  
3 **TRUST [AFFECTS DEBTOR USA COMMERCIAL MORTGAGE]**

4 No Objection by:

5  
6 OFFICE OF THE U.S. TRUSTEE

7 By: /s/ August B. Landis  
8 August B. Landis, Esq.

9  
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47  
48 **ORDER**

49 IT IS SO ORDERED.

50 # # #